

Members

Rep. Linda Lawson, Chairperson
Rep. Vernon Smith
Rep. Ralph Foley
Rep. Bruce Borders
Sen. Brent Steele
Sen. Richard Bray
Sen. Lindel Hume
Sen. Glenn Howard
Ed G. Buss
Steve Johnson
Hon. Randall T. Shepard
Larry Landis
Neil Moore
R. Todd McCormack
Sheila Hudson
Hon. Frances Gull
Hon. James Humphrey
Hon. Roger Duvall
Hon. Lynn Murray
Dr. Stephen Ross



SENTENCING POLICY STUDY COMMITTEE

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Committee

Authority: P.L. 216-2007

MEETING MINUTES¹

Meeting Date: September 10, 2008
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Linda Lawson, Chairperson; Rep. Vernon Smith; Rep. Ralph Foley; Rep. Bruce Borders; Sen. Brent Steele; Sen. Richard Bray; Ed G. Buss; Steve Johnson; Larry Landis; Neil Moore; R. Todd McCormack; Sheila Hudson; Hon. Frances Gull; Hon. Roger Duvall; Hon. Lynn Murray; Dr. Stephen Ross.

Members Absent: Sen. Glenn Howard; Sen. Lindel Hume; Hon. Randall T. Shepard; Hon. James Humphrey.

Chairperson Lawson called the meeting to order at 1:33 p.m. and began testimony with Senator Tallian.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

I. Issues concerning HEA 1324-2007 (theft of copper and other valuable metals)

Sen. Tallian testified that theft of copper and other valuable metals has significantly affected northwest Indiana. The South Shore Rail Yard, for example, had catalytic converters stolen daily from automobiles. Sen. Tallian stated that theft of copper used to be considered "small theft" but recently has grown to a much bigger industry costing individuals and companies hundreds of thousands of dollars.

Sen. Steele raised the issue with Sen. Tallian last session due to the increasing problems in southern Indiana. She stated currently, the problem is not with the statute, but the enforcement of the law. Sen. Tallian gave a letter to the committee from an individual who was a victim of theft and found the stolen items at a local scrap yard. The scrap yard tracked the individual down, but the police did not know how to prosecute the case.

Sen. Tallian introduced Joel Squadrito from the Omni Source Scrap Yard in Ft. Wayne. Mr. Squadrito is an employee of Omni and serves as a local police officer. Mr. Squadrito stated that Omni has taken a strong approach with the theft of valuable metals. Crime trends have shown that criminals are transporting stolen metals across the state and state lines. According to Mr. Squadrito, an educational method is used to train officers. He emphasized that the training program lasts for two days, and due to increased education over the last seven months, about 1200 criminal investigations and over 200 arrests have been made. Statistics have shown an increase in arrests after training. Mr. Squadrito also stated that before Marion County implemented the training program, there were only 26 investigations regarding the theft of scrap metals. After the training, 190 investigations have been pursued.

Sen. Steele provided the committee with a legislation draft that would remove the \$100 limit requirement for reporting. He also stated that he had a client who was a metal dealer and regardless of the dollar limit, would make a copy of the driver's license to identify those coming in and out of the scrap yard.

Mr. Squadrito concurred with Sen. Steele and stated that currently it is a logistical nightmare to separate out the \$100 limit reporting. So, Omni copies all drivers' licenses and has been maintaining a company policy for a couple of years. A lot of theft has occurred with multiple transactions in the past under \$100, so many criminals fall under the radar and are never caught.

Mr. Steve Johnson stated that Marion County includes a photo of the materials brought into the scrap yard besides a copy of the photo ID. Marion County ordinance mandates that a photo and a copy of the ID are required. Mr. Squadrito agreed with Mr. Johnson that the requirement for both help for investigative and prosecution purposes.

Rep. Foley said education was crucial even though officers could not be mandated to be educated. He also raised concern about the term "core buyers" and questioned why they are not included in the definition of metal dealers. Sen. Tallian responded that his concern was one of the suggestions for a needed change in statute.

Mr. Johnson also reminded the committee that "catalytic" is not defined in statute on the list

of precious metals.

Rep. Foley made another observation regarding the theft of signal wire from railroad crossings and traffic devices. He stated the value of selling precious metals is miniscule compared to the public safety of citizens. He questioned the current laws in place, and the low prosecution rates.

Mr. Squadrito said the enforcement technique has to be revised because scrap yards are taking metal from thieves and reselling it. If the process can be eliminated from a buyer, the enforcement process could be much more successful.

Rep. Lawson asked the committee if they had any other questions for Sen. Tallian and the individuals providing testimony.

Sen. Tallian suggested that a proposed bill could add "core buyers" and require them to be licensed and abide by state rules. Sen. Tallian also proposed to add Sen. Steele's recommendation of eliminating the \$100 requirement and mandate a photograph of scrap along with the person's ID. She also stated that another item to be discussed would be mandatory continuing education for police officers. A requirement could sunset three or four years in the legislation that would create a block of time devoted only to the theft of precious metals field.

Rep. Smith stated that problems are more pronounced in his district. Many churches and constituents have had metals stolen from them. He commended Sen. Tallian and the committee for initiating the discussion. Rep. Smith stated he would like to assist in sponsorship of the bill.

Mr. Johnson stated that technical changes could also be included in the bill such as the definition of valuable metals. Last year two laws amended the definition of valuable metals (Architectural Salvage bill), but the "metal" language is not consistent.

Judge Duval asked Mr. Squadrito about the amount of metals transported out of state. Mr. Squadrito stated that Michigan currently has no law, so it makes it difficult to prosecute and track across state lines. Most of the "bad guys" within the state will go to places where ordinances are not being enforced.

Mr. Dave Stewart from the Indiana Criminal Justice Institute (ICJI) testified that he attended a "Scrap Metals Theft" seminar. The Indianapolis Police Department and the Ft. Wayne Police Department were in attendance and determined that retailers and homeowners should take additional steps as well to protect their property. Testimony from AT&T and railroad companies stated how they could do more to help prevent some of the theft.

The Executive Vice President of OMNI Source stated that their seminars are available at no charge to any municipality or institution.

Rep. Lawson thanked all guests for their testimony and stated that all parties needed to contact Mr. Andy Hedges about the changes that need to be made for a bill draft. Rep. Borders asked for the contact information of those testifying.

II. Expungement of arrests for persons serving in the military.

Rep. Lawson asked Sen. Becker to provide her testimony to the committee.

Sen. Becker passed out a letter to the committee from a constituent in her district. Mrs. Carrie Williams, wrote to her in July about her family's situation. Mrs. William's husband is a National Guardsman and is currently serving his second tour of duty in Iraq. Mrs. William's husband had been interrogated into a confession of theft for \$1,000 by his employer. Law enforcement told him that if he admitted guilt, they would drop the charge to a misdemeanor offense, and if he tried to plead not guilty he would be dishonorably discharged from the military

Mrs. Williams presented the committee with her testimony and the history behind her husband's hearings, tribulations with the former employer, and the final outcome of paying restitution and the dismissal of her husband's case.

In 2004 when Mr. Williams returned from duty, he received unemployment. He interviewed for multiple jobs but due to his record stating a felony arrest occurred, he was denied employment. In May 2006, Mrs. William's husband filed for an expungement of his record but it was denied by the local prosecutor.

Mrs. Williams stated that a felony charge still exists on her husband's record and she testified before committee to create a bill to clear records for military vets if they have not had any other criminal charges for ten years. Every year her husband is required to prove to the National Guard that charges were cleared.

Sen. Bray stated that innocent people are accused of a crime and it's a terrible tragedy, but Mrs. Williams' request would change the requirement for everyone.

Sen. Becker suggested to include a military portion under certain conditions when expungement is allowed.

Sen. Bray stated that wiping a record clear for everyone in the military is too broad.

Rep. Foley questioned Mrs. Williams' case and asked if there was an absence of probable cause for the court's basis for denial.

Rep. Smith stated that the State of Indiana has continued to label people and hinder them from second chances. He said individuals are denied the opportunity to work because they are not given a second chance. Rep. Smith expressed that changes in the statute should not just be about military personnel but other individuals as well. He is concerned about what happens to felons and the state's decision to continually create a system against felons.

Sen. Steele stated that law enforcement should have access to record information, but it should not be used against Mr. Williams for employment purposes.

Judge Gull was concerned that as a mother of a son serving in the military, it is important for the military and those serving, to know who they're serving with.

Dr. Ross suggested that a provision could be added to the language that would not exempt sex offenders.

Mr. Hedges stated that currently in statute a particular provision exists that can "take" something out of records. The provision allows an individual to petition the Indiana State Police to restrict the disclosure of records and limit access to law enforcement only.

Mr. Larry Landis expressed that the expungement language has been worked on for a number of years. It is a reoccurring problem and the State of Indiana is the most restrictive on the expungement provision. Mr. Landis suggested that he would like to give judges more authority to determine.

Rep. Foley stated that Sen. Bray raised concerns about witnesses that are missing but later found. Cases that may be dismissed but re-filed and currently there is not category for a victim if he or she decides not to prosecute.

Mr. Johnson agreed that Sen. Steele's bill last year contained a difference between sealing and expunging a record. He stated that expungement is a policy decision that has to be made by the committee.

Rep. Smith stated again that the system is part of the problem and gave an example where an ex-felon was restricted from going to school because of his felony record.

Mr. Landis suggested that the committee take another look at Sen. Steele's bill he introduced last session that passed the senate, house and died in conference committee. He stated that the bill had a lot of support and it should be reviewed again.

Rep. Lawson concluded the discussion by asking Sen. Becker to work with Sen. Steele, Mr. Hedges and Rep. Smith to review last year's bill and to make suggestions and changes that the committee could agree on.

III. Granting the commissioner of the department of correction the authority to appoint policing officers.

Mr. Hedges explained a bill draft before the committee regarding granting the commissioner of the Department of Correction (DOC) the authority to appoint policing officers.

Sen. Bray asked if the DOC would provide course training or if the Indiana Law Enforcement Academy (ILEA) would provide the courses.

Mr. Neil Moore raised the issue of responsibility for an investigation in the event an officer in a DOC facility would be involved in a criminal act. Mr. Tim Brown from DOC responded that the criminal investigation would reside with the Indiana State Police and the administrative investigation would reside with DOC. Rep. Foley stated that under the drafted proposal, DOC would have the appropriate authority over a visitor in the prison for

someone who was just visiting or trafficking.

Rep. Smith presented a situation where loved ones and friends of an inmate in the system could be threatened, and it's not on DOC property, even though it would be in the realm of DOC.

Ms. Hudson asked for a definition of "correctional police officer" with respect to other law enforcement individuals and powers. Mr. Brown stated it would be up to the commissioner as to what type of officer would be in DOC facilities.

Ms. Hudson also observed that within the proposed bill, ILEA training was broadly defined and there are different types of training that occur at the academy. She wanted to know what kind of training would be established for correctional officers. Mr. Brown responded that DOC is currently in discussion with Mr. Randy Goodpaster at ILEA to address the specific needs and training for these particular officers. Right now, the discussion has included a four week program taught by ILEA for correctional officers. He also stated that the program that will be devised for correctional officers will be specifically designed for what arrest powers would be given to them in statute.

Rep. Borders asked Mr. Brown if offenders that help within the community would be restricted due to the considered piece of language before the committee. Mr. Brown answered that this legislation would not affect those offenders.

Rep. Lawson requested Mr. Brown review the proposed legislation with Mr. Hedges. She thanked the committee members for coming up with a compromised piece of legislation that everyone could be proud of.

IV. Modifying the lifetime registration requirement for certain sex offenders.

Rep. Lawson introduced Sen. Walker. Sen. Walker testified on behalf of one of his constituents who after ten years of faithful cooperation is still required to register as a sex offender. Sen. Walker stated that those who are on a lifetime designation on the registry, need to have an opportunity for a second chance if they have proven to society they are reformed.

Mr. Ludeman, Sen. Walker's constituent, testified that he was initially told by DOC that he had to register for ten years, but then checked online and it was posted that he had to register for a lifetime. Mr. Ludeman stated that he understands that the sex offender registry is necessary, but his wife and family are being harassed. He has lost three jobs since identifying himself on the registry. Mr. Ludeman also commented that law enforcement officers had visited job sites because his home address was not on file with the local police department even though he had notified the registry of an address change.

Rep. Lawson said that everyone serving on the committee has had to deal with the Adam Walsh bill and compliance with Federal law.

Sen. Bray questioned Mr. Hedges on how it would affect compliance with Federal law to make changes with the registry. He stated that he would like Mr. Hedges to review what

leeway Indiana has to make some revised changes.

Sen. Walker stated that he brought Mr. Ludeman to testify in front of the committee to bring a perspective on what it is like to live while being on the Registry. Rep. Lawson commented that she and Sen. Bray both have had constituents that have discussed with them about their families being threatened.

Mr. Hedges informed the committee on the Adam Walsh requirements. People with certain crimes have to register for life... Mr. Hedges stated that if the committee reduces the time served by offenders or gives judges the discretion to assign a time, the State would be in violation with Adam Walsh and lose federal funding.

Sen. Walker stated that even after sex offenders have completed their ten year span, their photograph and record is deleted from the registry but their name is still exists for individuals to review. Sen. Walker asked the committee if that requirement could be taken off the registry. Brent Myers from DOC stated that under Indiana Code the State could, but under the Adam Walsh legislation, the State could not and would lose funding in doing so.

Rep. Lawson concluded the discussion.

V. **Next scheduled meeting date**

Rep. Lawson set the next meeting date for October 8, 2008 at 1:30 P.M. The Sentencing Policy Study Committee was adjourned at 4:02 P.M.